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In The

Supreme Court of the United States

October Term, 1975

No. 75-1227

PAUL GOODSELL SULLINS, *Petitioner,*
v.
THE STATE BAR OF CALIFORNIA, *Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY STATEMENT AND DECISION BELOW

This is a brief in opposition to a Petition for Writ of Certiorari (28 U.S.C. § 1257(3)) to review a reported decision of the Supreme Court of California in an attorney disciplinary matter. Sullins v. State Bar (1974) 15 Cal.3d 609, 125 Cal. Rptr. 471, 542 P.2d 631 (rehearing denied by minute order of December 30, 1975).[1]

[1] In the State of California, the admission of attorneys to practice law and their
(footnote continued)

For convenience of this Court, a copy of

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discipline are vested exclusively within the inherent power of the Supreme Court of California (not a party to this Certiorari proceeding). RESPONDENT, The State Bar, has no power to suspend or disbar an attorney licensed in California. Only the Supreme Court of California may do so. Such Supreme Court action follows its independent review of the record of disciplinary proceedings and its exercise of its independent judgment. See, among many cases, Yokozeki v. State Bar (1974) 11 Cal.3d 436, 443; 113 Cal.Rptr. 602, 521 P.2d 858, Cert.den. 419 U.S. 900; Bernstein v. State Bar (1972) 6 Cal.3d 909, 916, 101 Cal.Rptr. 369, 495 P.2d 1289; Arden v. State Bar (1959) 52 Cal.2d 310, 315-316, 341 P.2d 6.

RESPONDENT State Bar is a public corpration within the judicial branch of California government. Cal. Constitution, Art. VI, Sec. 9; Cal. Business and Professions Code, sections 6001-6008. In part, RESPONDENT assists the Supreme Court of California as that Court's "administrative arm" in receiving complaints against attorneys from members of the public, in receiving applications for admission to practice law and in conducting appropriate proceedings and hearings thereon leading to recommendations to the Supreme Court of California for the admission, discipline or reinstatement of attorneys in this State. Cal. Business and Professions Code, sections 6040-6117; e.g., Brotsky v. State Bar (1962) 57 Cal.2d 287, 300-301, 19 Cal. Rptr. 153, 386 P.2d 697; Chronicle Publishing Co. v. Superior Court (1960) 54 Cal. 2d 548 565-566, 7 Cal.Rptr.109, 354 P.2d 637.

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the decision below is attached as an Appendix.

In the decision below, the Supreme Court of California disciplined PETITIONER, a California attorney, by public reproval. See Appendix, p. 14. Neither disbarment nor suspension of PETITIONER'S license to practice law in California was ordered by the Supreme Court of California. The decision below is now effective. No stay is in effect, PETITIONER'S application to Mr. Justice Rehnquist for a stay having been denied on February 23, 1976.

RESPONDENT'S STATEMENT OF THE CASE

Under California law, RESPONDENT[2] is empowered to impose a reproval upon a

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[2] PETITIONER wrote and captioned his petition as if the Supreme Court of California were the only Respondent. However, the Office of the Clerk of the Supreme Court of the United States requested PETITIONER to re-caption his petition to name the State Bar of California as the only Respondent. PETITIONER did re-caption his petition as requested but the body of his petition refers to the Supreme Court throughout as the Respondent. This Brief in Opposition uses the term "RESPONDENT" to refer solely to the State Bar of California.

California attorney upon the grounds provided by law, following the conclusion of formal disciplinary proceedings. Cal. Business and Professions Code, section 6078. The reproved attorney may petition the Supreme Court of California for review of RESPONDENT'S decision reproving him. Cal. Business and Professions Code, section 6083(c); rule 952(c), Cal. Rules of Court.

After RESPONDENT'S Disciplinary Board publicly reproved PETITIONER (see Appendix, p. 5), he sought California Supreme Court review. That Court granted review and thereupon exercised its independent judgment on the evidence. See Appendix, p. 9; see authorities cited supra, p. 2, fn. 1.

In the Petition for Certiorari, PETITIONER does not dispute the legal sufficiency of the evidence to sustain the decision of the Supreme Court of California publicly reproving him.

Accordingly, RESPONDENT respectfully adopts the complete statement of pertinent facts contained in the opinion of the Supreme Court of California and RESPONDENT

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respectfully refers this Court to that statement of facts which clearly demonstrates the convincing nature of the evidence abundantly supporting the decision reproving PETITIONER. Appendix, pp. 4-9.

In substance, the basis of the public reproval imposed on PETITIONER by the Supreme Court of California is that PETITIONER violated specific sections of the California Business and Professions Code binding on California attorneys in that he intentionally misled the Los Angeles County Superior Court by concealing from that Court the existence of a letter pertinent to that Court's decision on a petition presented by PETITIONER. Appendix, pp. 4-5, 10, 12-14.

The two questions presented by PETITIONER to this Court are very narrow in scope. In essence, they each concern only the extent of the notice afforded to PETITIONER of the nature of the formal disciplinary charges against him.

Petition at pp. 3-4.

In evaluating the two questions PETITIONER presents, the nature of

RESPONDENT'S formal disciplinary proceedings are important.

The Supreme Court of California has held that attorney disciplinary proceedings conducted by RESPONDENT are governed exclusively by the Rules of Procedure of the State Bar, Schullman v. State Bar (1973) 10 Cal.3d 526, 537, 111 Cal.Rptr. 161, 516 P.2d 865. Further, California's highest court has observed that these Rules of Procedure of the State Bar (foll. Cal. Business and Professions Code section 6087), provide a "panoply of legal protection" to an attorney accused of professional misconduct and insure that administrative due process will be observed. Schullman, supra, 10 Cal.3d at 537.

In Schullman, supra, the Court stated as follows as to the procedural safeguards to an accused attorney in a formal disciplinary proceeding:

> "...The rules provide for adequate notice of charges, and allow attorneys an opportunity to be heard, to present a defense, to engage in discovery, to present evidence, to subpoena books and records, as well as to confront and cross-

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> examine witnesses. (Bus. & Prof. Code, § 6085; see generally, [former] Rules of Procedure, rules 8-42; 6 Cal. Jur.2d Rev., Attorneys at Law, § 200 et seq.)"
> (Emp. added). 10 Cal.3d at 537.

It is undisputed that PETITIONER took liberal advantage of the procedural protection afforded him. It is undisputed that he introduced voluminous documentary evidence, that he presented his own witnesses and he cross-examined the State Bar's witnesses at length. Cf. Appendix, p. 10.

Concerning the only issue raised in this Court by the Petition for Certiorari -- the adequacy of the notice to PETITIONER of the formal disciplinary charges against him -- again, the record is undisputed. The record reveals as follows: On April 7, 1972, PETITIONER was served with a four-page statement of formal disciplinary charges entitled "Notice to Show Cause." Under the Rules of Procedure of the State Bar, (former rule 25, present rule 14.20) it is this Notice to Show Cause which commenced the formal disciplinary proceeding.

At PETITIONER'S request, the Notice to Show Cause was twice amended, on July 24, 1972 and on September 18, 1972. No testimony by PETITIONER'S witnesses or by State Bar witnesses was received on the merits of the charges until after both amendments to the Notice to Show Cause had been made.

It is further undisputed that the original and both amended forms of the Notice to Show Cause unmistakably charged that PETITIONER had concealed the existence of a specific letter from the Superior Court. This act of concealment was a major element in RESPONDENT'S findings of PETITIONER'S culpability and it was the essential factual basis of the California Supreme Court's public reproval of PETITIONER. Appendix, pp. 4-5, 10, 12-14.

ARGUMENT

THE DECISION BELOW BY THE SUPREME COURT OF CALIFORNIA IS LEGALLY CORRECT AND PETITIONER HAS PRESENTED NO SPECIAL AND IMPORTANT REASONS FOR GRANTING CERTIORARI.

Petitioner seeks certiorari from a decision of California's highest court in

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an attorney disciplinary proceeding. In that connection, we respectfully commend to this Court the observation of Mr. Justice Frankfurter writing for the Court in Theard v. United States (1957) 354 U.S.278, 281, that except within "narrow limits," it is not for this Court to sit in judgment on state court attorney disciplinary proceedings.

PETITIONER seeks this Court's review only on the issue of adequacy of notice of the formal disciplinary charges against him. But it is clear from the record that PETITIONER did receive formal, written and detailed notice of the formal charges which constituted the basis of the California Supreme Court's finding of PETITIONER'S culpability and its decision reproving him.

The following excerpt from the decision below demonstrates that the California Supreme Court fully considered essentially the same claim by PETITIONER of deprivation of due process of law as he has urged before this Court, and the California Supreme Court correctly determined that PETITIONER'S claim was without merit:

"There are no grounds for belief that the procedures of the local administrative committee and the disciplinary board in any way prejudiced petitioner's defense to the charges against him. The hearings of the local administrative committee and the disciplinary board extended from July 12, 1972 to October 10, 1974; during these hearings, petitioner was given full opportunity to argue his case and to make his very voluminous exhibits part of the record. All issues involved in the disciplinary board's findings were thoroughly argued in these hearings, as well as in various memoranda and briefs submitted by petitioner himself prior to the local administrative committee's report of its findings on May 20, 1974. The notice to show cause was twice amended at the urging of petitioner, in conformity with the State Bar Rules of Procedure, rule 30. The violations of Business and Professions Code sections 6103, 6106 and 6128, asserted in the conclusions of the local administrative committee, were charged in the notice to show cause. In its original as well as its amended versions, the notice to show cause unmistakably charged that

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> petitioner had concealed the existence of Fick's letter from the superior court; this concealment was a major element in the disciplinary board's findings. We conclude there is no merit to petitioner's first contention that he was denied due process by variances between the notice to show cause and the board's findings." (Single underlining indicates Emp. added; double underlining indicates Emp. in original). Appendix, p. 10.

PETITIONER'S citation of In re Ruffalo (1968) 390 U.S.544 (Petition, p. 21), does not aid him and, in any event, his discussion of the case does not reflect the vastly different fact situation posed by the record in Ruffalo. The attorney in Ruffalo was disciplined by a federal court solely on a charge which was added to the statement of formal charges in the state disciplinary proceedings after the attorney had given testimony in defense of the formal state disciplinary charges. 390 U.S. at 546-547, 550. This Court held that such a procedure constituted a want of fair notice such that it deprived the attorney of procedural due process. 390 U.S. at 552.

In marked contrast to Ruffalo, PETITIONER Sullins unmistakably had before him a written statement of the formal charges which formed the basis of his discipline prior to the time that either he or the State Bar had presented any evidence. Moreover, it is undisputed that PETITIONER did not even begin to testify on the merits of the disciplinary charges until both amendments to the Notice to Show Cause — which amendments he requested — had been made.

PETITIONER has also contended in the Petition for Certiorari at pp. 4, 16-18, that he was found guilty of misconduct by the Supreme Court of California on a number of facts and offenses not contained in the amended Notice to Show Cause. This contention is wholly without merit.

The opinion below states on its face the factual basis for PETITIONER'S public reproval. Appendix, pp. 4-5, 10, 12-14. The charge putting PETITIONER on notice as to the ultimate basis for his reproval was always included in the original and amended Notices to Show Cause. No prejudice, whatever, has been demonstrated by PETITIONER.

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CONCLUSION

For the foregoing reasons, RESPONDENT respectfully submits that PETITIONER has failed to present any substantial federal question incorrectly decided below. We submit that the decision below is fully correct and there are no special or important reasons presented for granting certiorari. Rules 19(1) and 24(1), Rules of the Supreme Court of the United States. RESPONDENT respectfully submits that certiorari should be denied.

Respectfully submitted,
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